



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL, OPC, MNDCL-S

### Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution, made on January 24, 2020 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a One Month Notice for Cause (the "One Month Notice");
- a monetary order for damage or compensation;
- an order to retain the Tenants' security deposit and pet damage deposits; and
- an order granting recovery of the filing fee.

The Landlord D.W. and the Tenant K.S. attended the hearing at the appointed date and time. At the beginning of the hearing, the Tenant acknowledged receipt of the Landlord's Application package. No issues were raised with respect to service or receipt of this documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

### Preliminary Matters

At the start of the hearing the parties testified and agreed that the tenancy ended on February 29, 2020. As such, the Landlords are no longer seeking an order of possession in relation to the One Month Notice and their claim is therefore dismissed.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However,

only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Landlords entitled to a monetary order for compensation, pursuant to Section 67 of the Act?
2. Are the Landlords entitled to retaining the Tenants' security and pet damage deposit, pursuant to Sections 38 and 72 of the Act?
3. Are the Landlords entitled to the return of the filing fee, pursuant to Section 72 of the Act?

Background and Evidence

The Tenant stated that he commenced his tenancy on September 1, 2017, however, on May 1, 2018 the new Landlord began to manage the rental unit. The parties testified and agreed that near the end of the tenancy, the Tenants were required to pay rent in the amount of \$850.00 which was due to be paid to the Landlords on the first day of each month. The Tenants paid a security deposit in the amount of \$337.50 and a pet damage deposit in the amount of \$512.50, for a combined amount of deposits paid to the Landlords in the amount of \$852.50. The parties agreed that the Landlords continue to hold this amount.

The Landlord testified that he is seeking monetary compensation in the amount of \$225.00 in relation to late fees associated with the Tenants paying their rent late nine times throughout their tenancy. The Landlord stated that the \$25.00 late fee is a term of the tenancy agreement and that the Tenants were notified through an automated system as to what their outstanding balance is each month. The Landlords are also seeking the return of the filling fee. If successful, the Landlords are seeking to retain a portion of the Tenants' deposits towards their claim.

The Tenant acknowledged that rent was paid late nine times throughout the tenancy. The Tenant stated that he was uncertain if there was a term in the tenancy agreement surrounding charges for late payments of rent. The Tenant stated that the Landlords never notified him that they were charging a late fee and that it wasn't until they received the Landlords' Application that they learned about the Landlords seeking this amount. The Tenant stated that he does not agree with the late charges as the Landlord did not discuss this with the Tenants at all during their tenancy.

### Analysis

Based on the affirmed oral testimony and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlords to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlords did what was reasonable to minimize the damage or losses that were incurred.

The Landlords are claiming \$225.00 in relation to late charges as the Tenants paid their rent late nine times throughout their tenancy. In this case, I find that the Landlords provided insufficient evidence to demonstrate that there was a term in the tenancy agreement which outlined there would be a \$25.00 charge if the Tenants paid rent late. While the Tenant agreed that rent was paid late nine times, the Landlords provided insufficient evidence to demonstrate that they notified the Tenants that they were being charged \$25.00 late fee each time rent was paid late. As such, I find that the Landlords did not mitigate their loss.

In light of the above, I dismiss the Landlords' claim for late charge fees in the amount of \$225.00 without leave to reapply. As the Landlords were not successful, I find that they are not entitled to the return of the filing fee paid to make the Application.

I order that the Landlords return the full amount of the Tenants security and pet damage deposits in the amount of \$852.50 to the Tenants. The Tenants are awarded a monetary order in the amount of \$852.50. The order should be served to the Landlords as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia.

During the hearing, the Landlord stated that the Tenants caused damage to the rental unit. The Landlord was notified that he is at liberty to reapply for monetary compensation should he feel entitled to it, but that the claim for damage to the rental unit had not been included in the Landlords' Application.

### Conclusion

The Landlords' Application is dismissed without leave to reapply. The Tenants are granted a monetary order in the amount of \$852.50 which represents the full return of the Tenants' security deposit and pet damage deposits currently held by the Landlords. The order should be served to the Landlords as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 30, 2020

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Residential Tenancy Branch